

PICATINNY FEDERAL CREDIT UNION,

Plaintiff,

v.

FEDERAL NATIONAL MORTGAGE
ASSOCIATION,

Defendant.

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

Hon. Garrett E. Brown

Consolidated Civil Action
No. 09-01295 (GEB)

SPERRY ASSOCIATES FEDERAL CREDIT
UNION,

Plaintiff,

v.

FEDERAL NATIONAL MORTGAGE
ASSOCIATION,

Defendant.

AFFIDAVIT OF JAMES H. FORTE IN
SUPPORT OF MOTION OF PLAINTIFF
PICATINNY FEDERAL CREDIT
UNION FOR PARTIAL SUMMARY
JUDGMENT

FEDERAL NATIONAL MORTGAGE
ASSOCIATION,

Plaintiff,

v.

PROPONENT FEDERAL CREDIT UNION,

Defendant.

SUFFOLK FEDERAL CREDIT UNION,

Plaintiff,

v.

FEDERAL NATIONAL MORTGAGE
ASSOCIATION,

Defendant.

STATE OF NEW JERSEY)
) ss.:
COUNTY OF MORRIS)

JAMES H. FORTE, of full age, being duly sworn according to law, upon his oath,
deposes and says:

1. I am an attorney at law of the State of New Jersey and a member of the firm of Saiber LLC, attorneys for plaintiff Picatinny Federal Credit Union ("Picatinny"), and submit this Affidavit in support of Picatinny's motion for partial summary judgment against defendant Federal National Mortgage Association ("Fannie Mae") as to liability on the First Count of Picatinny's Amended Complaint for conversion and on the Second Count of the Amended Complaint for a judgment declaring that Fannie Mae does not have any right to enforce the promissory notes and related mortgages that are the subject of this action.

2. On February 24, 2009, I sent Miriam Smolen, Esq., Assistant General Counsel with Fannie Mae, a letter demanding that Fannie Mae immediately indorse to the order of Picatinny the promissory notes and assign the corresponding mortgages that it wrongfully obtained from U.S. Mortgage Corp. ("U.S. Mortgage"), and account for and return all payments received in connection therewith. At that time, based upon Picatinny's investigation, the total number of loans stolen from Picatinny and allegedly sold to Fannie Mae was fifty-eight. The deadline for the return of the loans set forth in my letter was February 27, 2009.

3. Ms. Smolen never responded to my demand letter, either before or after February 27, 2009. Nor did she or anyone else at or on behalf of Fannie Mae request more time to do so.

4. In discovery, Fannie Mae produced a spreadsheet that purports to reflect, among other things, the persons who examined the loan documents underlying each of the loans

that Mr. McGrath stole from the credit unions and purportedly sold to Fannie Mae (hereinafter “Stolen Loans”). The spreadsheet contains a Fannie Mae loan number in the far left column, which is abbreviated as “FNMA ID.” Comparing the Fannie Mae loan numbers on the spreadsheet with the numbers in the row entitled “Fannie Mae Loan No.” reflected on the cover page accompanying the documents underlying each of the Stolen Loans attached as Exhibit D to the Affidavit of Michael McGrath reveals that the Stolen Loans are identified on three of the last four loans on the bottom of page 2 of the spreadsheet (Fannie Mae Loan Nos. 40056448157, 4005648151 and 4005648153), all of page 3 of the spreadsheet, and the top two loans on page 4 of the spreadsheet (Fannie Mae Loan Nos. 4006188125 and 4006197950).

5. Attached hereto is a true and correct copy of the exhibits to which Picatinny refers in its Brief support of its motion for partial summary judgment:

- (a) Amended Complaint, filed on May 26, 2009, attached as Exhibit A;
- (b) Answer to Amended Complaint, filed on June 11, 2009, attached as Exhibit B;
- (c) Cited pages from the deposition transcript of Stephen J. Lardiere, former General Manager of Picatinny, attached as Exhibit C;
- (d) Credit Union Mortgage Financing Assistance Agreement between CUMAnet, Inc. and Picatinny, as of April 7, 2005, attached as Exhibit D;
- (e) Cited pages from the deposition transcript of Joan Mahon, Vice President of Special Projects for CUMAnet, attached as Exhibit E;
- (f) E-mail from James H. Forte, Esq. to Miriam Smolen, Esq., Assistant General Counsel with Fannie Mae, dated February 18, 2009, and attached spreadsheet of loans sold without authorization based upon Picatinny investigation, attached collectively as Exhibit F;

(g) E-mail from James H. Forte, Esq. to Miriam Smolen, Esq., Assistant General Counsel with Fannie Mae, dated February 23, 2009, attached as Exhibit G;

(h) E-mail from Miriam Smolen, Esq., Assistant General Counsel with Fannie Mae, to James H. Forte, Esq., dated February 24, 2009, attached as Exhibit H;

(i) Letter from James H. Forte, Esq. to Miriam Smolen, Assistant General Counsel with Fannie Mae, dated February 24, 2009, attached as Exhibit I;

(j) Fannie Mae's Second Amended Responses to Plaintiff's First Set of Interrogatories, dated March 23, 2010, attached as Exhibit J;

(k) Cited pages from the deposition transcript of Debra Thompson, Director of Operations Processing of Fannie Mae, attached as Exhibit K;

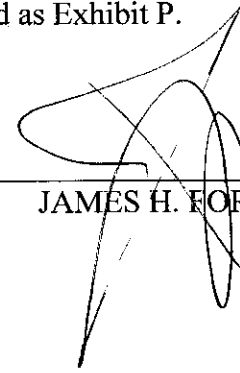
(l) Cited pages from the deposition transcript of John Gang, formerly a Vice President of Assets, Acquisitions & Custody of Fannie Mae, attached as Exhibit L;

(m) Cited pages from the deposition transcript of Barbara Cushman, a loan certification specialist with Fannie Mae, attached as Exhibit M; and

(n) Spreadsheet produced by Fannie Mae identifying the Fannie Mae employees who allegedly reviewed and certified the documents underlying the Stolen Loans and loans stolen from other credit unions (with the Stolen Loans highlighted), attached as Exhibit N;

(o) Cited pages from deposition transcript of Alexander Saphos, a Fannie Mae Customer Account Manager assigned to U.S. Mortgage, attached as Exhibit O; and

(p) Expert Report of Susan E. Tittl, attached as Exhibit P.

A handwritten signature in black ink, appearing to read 'James H. Forte', is written over a horizontal line.

JAMES H. FORTE

Sworn and subscribed to before me
on this 15th day of December, 2010

A handwritten signature in black ink, appearing to read 'Maria D. Ramirez', is written over a horizontal line.

NOTARY PUBLIC
MARIA D. RAMIREZ
A Notary Public of New Jersey
My Commission Expires April 22, 2015